

HONEY D. HERRICK
Claimant

UNITED METHODIST HOME
Respondent

**KANSAS ASSOCIATION OF HOMES FOR
THE AGING INSURANCE GROUP, INC.**
Insurance Carrier

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ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment with respondent on the dates alleged?
- (2) What is the appropriate date of accident in this matter?

- (3) Did claimant provide timely notice of accidental injury as required by K.S.A. 44-520?
- (4) Did claimant submit timely written claim as required by K.S.A. 44-520a?
- (5) Is claimant entitled to reimbursement of certain hospital and medical expenses?
- (6) Is claimant entitled to future and unauthorized medical treatment?
- (7) What, if any, is the nature and extent of claimant's injury and/or disability?

Additionally, respondent raised the following issue in its brief:

Does claimant's condition constitute an accidental injury or an occupational disease?

Several of the above issues were not decided by the Administrative Law Judge. The parties agreed at oral argument before the Appeals Board that, if the Appeals Board reverses the Administrative Law Judge on the issues of accidental injury and arising out of and in the course of employment, these remaining issues may be decided by the Appeals Board without the necessity of a remand to the Administrative Law Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Appeals Board adopts the findings and conclusions of the Administrative Law Judge as its own as if specifically set forth herein.

The Appeals Board finds compelling the testimony of rheumatology specialist Kent A. Huston, M.D., from the Center for Rheumatic Diseases in Kansas City, Missouri. Dr. Huston diagnosed claimant with scleroderma. After his examination of claimant, he diagnosed claimant the classic symptoms of scleroderma. He testified that 90 percent of people with scleroderma also develop Raynaud's phenomenon. Additionally, both

Dr. Huston and David Hoherz, M.D., a board certified general surgeon, testified that the use of vibrating tools would cause or accelerate claimant's scleroderma.

Claimant had early on been diagnosed by Dr. Hoherz with Raynaud's phenomenon. Dr. Hoherz felt that claimant's most likely cause for the Raynaud's phenomenon would be claimant's long-term smoking and occasional cocaine abuse. He did agree that medical literature supports a finding that vibratory tools are a common cause for Raynaud's phenomenon. However, Dr. Huston testified that, while he agreed vibratory equipment could cause or contribute to the development of Raynaud's phenomenon, he did not believe claimant's use of a buffer while working for respondent would cause or contribute to claimant's problems. He reviewed industrial information dealing with hundreds of thousands of people who used industrial buffers over a lengthy period of time. He found no medical literature suggesting that industrial buffers caused or contributed to Raynaud's phenomenon. He did, however, believe that claimant's long-term smoking and occasional cocaine use caused and/or contributed to both the scleroderma and the Raynaud's phenomenon.

The Appeals Board finds that the greater weight of the evidence supports a finding that claimant's use of the industrial buffer while working for respondent did not cause or contribute to her development of Raynaud's phenomenon but rather her condition is related to the non-work-related scleroderma condition as well as claimant's smoking and occasional cocaine abuse.

The Appeals Board acknowledges P. Brent Koprivica, M.D., who examined claimant at her attorney's request, found a direct connection between her Raynaud's phenomenon and the use of the buffer. However, the Appeals Board finds the testimony of Dr. Huston, coupled with his rheumatology expertise, and the testimony of Dr. Hoherz regarding the cause of claimant's scleroderma to be more persuasive.

The Appeals Board further finds it significant that claimant's condition continued to worsen after she stopped using the buffer in December 1993. Initially, claimant's problem was associated with her right upper extremity only. However, after she stopped using the buffer, claimant developed problems in her left upper extremity, which have worsened since that time. Dr. Huston and Dr. Hoherz both agreed that it would be difficult to relate the cause of claimant's left upper extremity problems to the use of the buffer when the problems did not develop until after the use of the buffer was discontinued.

In proceedings under the Workers Compensation Act, it is claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence. K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

In this instance, the Appeals Board finds claimant has failed to prove a connection between the development of claimant's Raynaud's phenomenon with the use of the buffer.

The more compelling evidence supports a finding that claimant's ongoing circulatory problems are related to the non-work-related scleroderma, claimant's smoking and occasional recreational cocaine use. Therefore, the Award of the Administrative Law Judge denying claimant benefits in this matter should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated March 27, 2000, denying claimant benefits for having failed to prove accidental injury arising out of and in the course of her employment with respondent should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS
Jeffrey A. Chanay, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director